

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**INTERNATIONAL REFUGEE
ASSISTANCE PROJECT,**

Plaintiff,

v.

DEPARTMENT OF STATE,

Defendant.

Civil Action No. ____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR VIOLATION
OF THE FREEDOM OF INFORMATION
ACT, 5 U.S.C. § 552, *et seq.***

Last week, the Trump Administrative issued an executive order that gives state and local governments an unprecedented power previously reserved exclusively to the federal government: the power to turn away refugees at their borders. Under this new policy, a governor or locality may block refugees from being resettled in their jurisdictions even if a community of people stand ready to welcome them, even if family members have been awaiting their arrivals, even if resources and opportunities available make it the best place for those refugees to rebuild their lives, and even when the desire to keep them out is based on where they are from, the color of their skin, or how they pray. The policy represents but the latest in a series of attacks by this Administration on refugees and those who seek to assist them in finding safety and security in the United States.

The International Refugee Assistance Project (“IRAP”) filed a Freedom of Information Act (“FOIA”) request more than two months ago seeking information about this anticipated policy, which was foreshadowed by the 2017 Executive Order imposing a ban on refugees and

travelers from several predominantly Muslim countries. To date, IRAP has received no more than an acknowledgment that its request was received. Accordingly—and in light of last week’s announcement that the policy has been formulated—IRAP brings this action for declaratory and injunctive relief, seeking to compel the disclosure and release of urgently needed records that this Administration has unlawfully withheld from public scrutiny.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346. This Court also has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B).

2. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B), which provides for the hearing of FOIA cases in, among other proper venues, this District.

3. Mandatory injunctive relief is proper under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff **IRAP** is a non-profit organization that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world’s most persecuted individuals and empower the next generation of human rights leaders.

5. IRAP routinely engages in gathering information through FOIA requests and other means in order to disseminate that information to the public, including refugees and their families in aid of their efforts to reach safety and security. IRAP publishes policy reports to the public on refugee resettlement issues and maintains “Know Your Rights” and other educational materials on its website. IRAP’s website is regularly visited by refugees, their families, and those who seek

to assist them for the latest information on refugee law and policy. In addition, IRAP issues press releases and publishes a blog on its work and issues related to refugee policy. IRAP has a monthly newsletter that reaches over 25,000 individuals and it maintains a Facebook account with over 47,000 followers and a Twitter account with over 18,000 followers.

6. Defendant **Department of State (“DOS”)** is a cabinet department of the United States federal government. DOS oversees implementation of policies related to the resettlement of refugees in the United States. DOS is an agency within the meaning of 5 U.S.C. § 552(f) and is in possession of, and exerts control over, records responsive to IRAP’s FOIA request.

FACTUAL BACKGROUND

7. Throughout his time in office, President Trump has sought to dismantle the United States’ refugee resettlement program. In his first week in office, President Trump issued an Executive Order that, among its many provisions, indefinitely blocked Syrian refugees from entering the United States and suspended all refugee admissions for 120 days. *See* Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (“EO-1”).

8. EO-1 also mandated that “to the extent permissible by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees.” *Id.* § 5(g). This language was repeated in a second executive order issued on March 6, 2017 to replace EO-1 after a nationwide injunction blocked its implementation. *See* Exec. Order No. 13,780 § 6(d), 82 Fed. Reg. 13209 (Mar. 6, 2017).

9. Although these policies were announced over two years ago, no further details were provided to the public until last week’s issuance of the Executive Order on Enhancing State and Local Involvement in Refugee Resettlement (“Refugee Veto Executive Order”). Attached

hereto as Exhibit A. The order purportedly grants both state and local officials the ability to block the resettlement of refugees within their respective jurisdictions. While under the status quo, refugees are resettled in nearly every state (including states that do not administer refugee resettlement programs), the Refugee Veto Executive Order purports to block refugees from resettling *unless* both the state and locality consent.

10. Despite the sweeping and unprecedented nature of this new policy, the Administration has provided few details, including details about how the policy was developed. There is an urgent need to know these details because of the drastic impact the Refugee Veto Executive Order will have on the lives of individual refugees and their families, the organizations that assist in refugee resettlement, and local communities that seek to welcome refugees.

11. Indeed, the role of state and local officials in refugee resettlement has been a subject of frequent, ongoing, public debate.¹ It has likewise been the subject of prior federal litigation. *See, e.g., Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 904-05 (7th Cir. 2016) (Posner, J.) (striking down as unlawfully discriminatory then-Governor Pence's attempt to exclude Syrian refugees from being resettled in Indiana).

¹ *See, e.g.,* Michael Shear & Zolan Kanno-Youngs, "Trump Slashes Refugee Cap to 18,000, Curtailing U.S. Role as Haven," N.Y. Times, Sept. 26, 2019, <https://www.nytimes.com/2019/09/26/us/politics/trump-refugees.html>; Bobby Allyn, "Trump Administration Drastically Cuts Number Of Refugees Allowed To Enter U.S.," National Public Radio, Sept. 26, 2019, <https://www.npr.org/2019/09/26/764839236/trump-administration-drastically-cuts-number-of-refugees-allowed-to-enter-the-u>. Hamed Aleaziz, "The Trump Administration Is Slashing The Number Of Refugees Allowed In The US To An All-Time Low," BuzzFeed, Sept. 26, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/refugee-admission-low-border-asylum-immigration-trump>; Brian Bakst, "GOP governor candidate Johnson calls for refugee halt," Capitol View, July 12, 2018, <https://blogs.mprnews.org/capitol-view/2018/07/gop-governor-candidate-johnson-calls-for-refugee-halt/>; Erin Beck, Committee abruptly adjourns during refugee, sanctuary city discussion," The Register-Herald, Feb. 6, 2019, https://www.register-herald.com/news/state_region/committee-abruptly-adjourns-during-refugee-sanctuary-city-discussion/article_4bcd4db-89a0-515f-9ae5-4bf611a502d7.html; Rachel M. Cohen, "Maryland's GOP Governor Recently Opposed Trump on Immigration, but his Record Tells a Different Story," The Intercept, July 12, 2018, <https://theintercept.com/2018/07/12/larry-hogan-maryland-trump-ben-jealous/>; Associated Press, "Lawyers for Tennessee Lawmakers, Feds Clash in Refugee Case," March 20, 2019, <https://wreg.com/2019/03/20/lawyers-for-tennessee-lawmakers-feds-clash-in-refugee-case/>.

12. In addition to information about a policy to authorize states and localities to block refugee resettlement, IRAP's FOIA request also sought information about two other policy changes announced by the Trump Administration for which details have not been made publicly available.

13. First, the Administration's Proposed Refugee Admissions for Fiscal Year 2018 noted a new policy that would place greater emphasis on resettling refugees based on "assimilation criteria." *See* Report to Congress: Proposed Refugee Admissions for Fiscal Year 2018, Submitted on Behalf of The President of the United States (2017), at 52.² Although this announcement generated significant media attention, the Administration has not provided any further information regarding how such criteria would be developed and applied.

14. Second, a funding notice for Fiscal Year 2019 indicated that the number of federal refugee resettlement agencies would be reduced from nine federal contractors to an unspecified number. *See* State Department, Bureau of Population, Refugees, and Migration, "FY 2019 Notice of Funding Opportunity for Reception and Placement Program," March 15, 2018.³ Notwithstanding the significant media attention that this announcement also generated, the Administration has not provided any additional details to the public.

STATUTORY FRAMEWORK

15. Any member of the public may request records from an agency of the United States under the FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Under the statute, an agency that receives a FOIA request must respond in writing within 20 business days after receipt of the request, excluding legal public holidays. 5 U.S.C. § 552(a)(6)(A)(i). In its response, an agency must: (1) inform the

² Available at <https://www.state.gov/wp-content/uploads/2018/12/Proposed-Refugee-Admissions-for-Fiscal-Year-2018.pdf>.

³ Available at <https://www.state.gov/funding-opportunities/funding-opportunity-announcements/fy-2019-notice-of-funding-opportunity-for-reception-and-placement-program/>.

requestor as to whether it intends to comply with the request; (2) provide reasons for its determination; (3) and inform the requestor of its right to appeal the determination. *Id.*

16. FOIA provides for an extension of the deadline “[i]n unusual circumstances” but limits this extension to “ten working days.” 5 U.S.C. § 552(a)(6)(B)(i). Where an agency seeks to invoke this provision, it must “set[] forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” *Id.*

17. FOIA requires an agency to disclose in a timely manner, all records that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. §§ 552(a)(3)(A), 552(b)(1)-(9).

18. FOIA also requires an agency to make a reasonable search for responsive records. 5 U.S.C. § 552(a)(3)(C).

19. Under 5 U.S.C. § 552(a)(4)(B), upon a requestor’s complaint, a district court has jurisdiction to enjoin an agency from withholding records and to order production of records subject to disclosure.

THE FOIA REQUEST AND AGENCY RESPONSE

20. On July 8, 2019, IRAP submitted a FOIA request (“the Request”) to DOS via fax and certified mail. The Request is attached hereto as Exhibit B.

21. The Request sought three categories of records related to:

- a. The role of state and local jurisdictions in decisions related to the resettlement in their jurisdictions of refugees;
- b. Applying criteria related to assimilation in refugee resettlement, or otherwise amending existing policies that select refugees for resettlement based on vulnerability criteria; and

- c. Plans to reduce the number of federal refugee resettlement agencies from nine federal contractors.

22. DOS acknowledged receipt of the request on July 24, 2019 (“the Response”). The Response is attached hereto as Exhibit C.

23. In its acknowledgement of receipt, DOS denied IRAP’s request for expedited processing. *Id.* at 1.

24. The Response also invoked the FOIA statute’s “unusual circumstances” provision. *Id.* at 2 (citing 5 U.S.C. § 552(a)(6)(B)(i)-(iii)).

25. The Response did not provide a date by which a determination was expected to be made. *But see* § 552(a)(6)(B)(i).

26. The Response provided as its sole basis for invoking the “unusual circumstances” provision the fact that “[t]he records [sought] require the need to search in offices that are separate from the office processing [the Request].” Exh. B at 2.

27. The Response also designated the Request as “complex” without further explanation or reference to any statutory provision. *Id.*

28. On September 11, IRAP appealed DOS’ denial of their request for expedited processing via letter sent by fax and certified mail. The latter was delivered on September 16.

29. To date, IRAP has received no decision by DOS on IRAP’s appeal of the denial of expedited processing, in contravention of the statutory and regulatory requirement that any such decision be issued within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 22 C.F.R. § 171.11(f)(4).

30. As of the filing of this Complaint, DOS has not notified IRAP of a determination or provided IRAP with an expected timeframe by which it will do so.

31. DOS has not provided a determination regarding IRAP's FOIA request within the time period required by the FOIA. *See Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.D.C. 2013) (defining "determination" under FOIA).

32. Upon information and belief, DOS has yet to begin a search for records responsive to the Request.

33. Because DOS failed to comply with the time limit provisions of FOIA, IRAP is deemed to have exhausted its administrative remedies with respect to the Request, including that it be accorded expedited processing. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

34. IRAP re-alleges and incorporates by references all of the foregoing paragraphs in this Complaint as though fully alleged herein.

35. By failing to make a determination on IRAP's FOIA request within the required statutory deadlines, DOS has violated the FOIA. 5 U.S.C. § 552(a)(6)(A)(i)-(iii).

36. DOS likewise violated the FOIA, 5 U.S.C. § 552(a)(3), and applicable regulations promulgated thereunder by failing to conduct a reasonable search and promptly releasing the records responsive to the Request.

37. DOS also violated the FOIA and its regulations by failing to issue a written decision on IRAP's appeal of the denial of expedited processing within the required deadlines. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 22 C.F.R. § 171.11(f)(4).

38. On information and belief, DOS currently has possession, custody, or control of the records sought in the Request.

PRAYER FOR RELIEF

For these reasons, IRAP asks that this Court grant the following relief:

- a. Declare that DOS has violated the FOIA by unlawfully withholding the requested records;
- b. Order DOS to conduct a reasonable search for the requested records and disclose them to IRAP as soon as is practicable;
- c. For any records responsive to the Request that are withheld or redacted, order DOS to produce a *Vaughn* index within 14 calendar days after the completion of the production of documents;
- d. Review any decision by DOS to withhold or redact responsive records on the assertion that the withheld or redacted information is subject to one or more FOIA exemptions;
- e. Award IRAP its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- f. Grant such other relief as the Court deems just and proper.

Dated: September 30, 2019

Respectfully submitted,

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